

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7750 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GAJENDRABHAI CHAMPAKLAL PATEL HEIR L.R. AND EXECUTOR OF-

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioner

MR. DP JOSHI AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/12/98

ORAL JUDGEMENT

By order dated 17th September, 1991, the competent authority and the Additional Collector (ULC) Surat, considering the form filed by one Shantilal Jamnadas Patel under section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 ("the ULC Act" for short), held that there was no excess vacant land. However, one Rajendra C. Patel executor of Shri Shantilal Jamnadas Patel filed appeal No. Surat.83/91

before the Urban Land Tribunal and Additional Chief Secretary to the Government of Gujarat, Revenue Department, Ahmedabad under section 33 of the ULC Act making grievance about the constructed area and the area which was likely to be reduced under the Town Planning Scheme. By the judgment and order dated 30th October, 1996, the appellate authority accepted the stand of the appellant and directed making of necessary note in the revenue record with regard to the constructed area and the area which was likely to be reduced under the Town Planning Scheme. After the passage of around two years from the appellate decision and seven years from the decision of the competent authority, the Government through its Deputy Secretary in Revenue Department issued notice to the petitioners mainly alleging that the property bearing survey No. 60 was self acquired property and not coparcenary property as stated by the declarant since the property came to be purchased by registered sale deed dated 11th August, 1970. In that respect, it has been pointed out by the petitioner through the record including the finding of fact recorded by the competent authority that the sale deed was taken by the deceased as the Karta of the Hindu Undivided Family. It, therefore, clearly appears on facts that there was no reason to undertake the exercise of suo motu revision as per the notice annexure-C dated 11th August, 1998. Reference in this connection has been made to the decision of this Court in case of Jagdishbhai Nagarbhai Patel vs. State of Gujarat reported in 1996 (2) GLR 499 and Dwarkadas Govinddas vs. State of Gujarat reported in 1996(2) GLH (UJ) 7. Both of these decisions were against such show cause notices as have been challenged in this petition. In reply, Mr. D.P. Joshi, learned Assistant Government Pleader has placed reliance upon the decision rendered by this Court (Coram:J.N.Bhatt,J.) on 10th April, 1996 in Special Civil Application No. 4586 of 1995.

I have heard the learned advocate appearing for the petitioner and the learned Assistant Government Pleader for the respondent authorities. I am of the opinion that it would not be necessary to go into the competency of the authority in issuing the impugned show cause notice inasmuch as on facts, there is no justification for issuance of such show cause notice as the one impugned in this writ petition. This is so because it has been on record of the case that the property bearing survey No. 60/2 which is stated to be self acquired property by the competent authority is in fact coparcenary property as recorded not only by the competent authority but as appearing from the recital in

the document itself that the property was purchased as the Karta of Hindu Undivided Family. Hence, in the facts of the case, this petition is required to be allowed. The impugned show cause notice dated 11th August, 1998 will stand quashed and set aside. Rule is made absolute accordingly. No order as to cost.

1.12.1998. (M.S.Parikh,J.)

Vyas